

means for fixing the position of the cardiac immobilizing member; said cardiac immobilizing member, evacuating means and fixing means being constructed, configured and adapted to be attachable to the heart by reason of a partial vacuum in the partial chamber defined by the cardiac immobilizing member and substantially immobilizing that portion of the heart surface at least partially surrounded by the cardiac immobilizing member.

Please cancel Claims 8 and 10.

#### REMARKS

The subject matter of the claims amended above was found to be allowable both as to subject matter and form..

Applicant, within the past few days, became aware of an abstract published, it is believed, in the fall of 1996, before applicant filed this application. A copy of this abstract is enclosed.

At applicant's request, a search was conducted which resulted in the identification of WO 9710753, copy enclosed, which was published on 27 March 1997, four months after applicant's filing date and, therefore, not prior art. However, WO 9710753 claims priority to United States Patent Application No. 08/531,363, Filed 20 September, 1995, which, insofar as applicant can determine, has not issued as a United States Patent.

Anticipating the possibility that said U.S. Patent Application could issue, applicant requests amendment of the claims to clearly distinguish over such patent, if it ever issues.

The abstract and WO 9710753 disclose an "octopus" type cardiac immobilization device that applies suction through a cannula to the heart. In order to distinguish over these publications, whether or not prior art, applicant has incorporated into the amended independent claims subject matter from dependent claims that define resilient structure and adhesive bonding, neither of which are mentioned or suggested in these publications.

It is therefore considered that the claims as amended clearly and patentably distinguish the invention as to all known and possible prior art.